

The public body then publishes the amount of the additional expenditure, including the expenditures accumulated prior to the expenditure exceeding 10% of the initial amount of the contract and publishes thereafter each additional expenditure.

42.2. The public body also publishes, in the electronic tendering system, within 90 days of the end of a contract referred to in section 42, the final description of the contract. That period is extended to 120 days for a contract entered into for the benefit of joint public bodies referred to in section 15 of the Act.

The body also publishes, within the same time, the final description of any contract that, at the time of its conclusion, was to involve an expenditure lower than \$25,000, but for which the total amount paid is equal to or greater than \$25,000.

The final description of a contract must contain at least

(1) the name of the contractor, the date of the end of the contract and the total amount paid;

(2) in the case of a task order contract involving several contractors, their respective name and the total amount paid to each of them;

(3) in the case of a contract that involves options, the type and number of options exercised and the total amount paid following their exercise; and

(4) in the case of a contract referred to in the second paragraph, the other information provided for in paragraphs 1 to 6 of section 42 and section 42.1.

42.3. If a task order contract involving several contractors involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 42 to 42.2, the public body indicates on the electronic tendering system how to obtain the information related to the results.

43. Despite sections 42 to 42.3, no publication is required in the case of a contract involving confidential or protected information within the meaning of subparagraph 3 of the first paragraph of section 13 of the Act.”

15. Section 59 is revoked.

16. Section 60 is amended by replacing “minister responsible” by “Conseil du trésor”.

FINAL

17. Sections 1 to 4, 5, to the extent that that section concerns the provisions of sections 18.2 to 18.9 of the Regulation respecting construction contracts of public bodies, and sections 8 to 10 apply only to calls for tenders issued as of 23 May 2013.

Section 11 applies only to qualification proceedings started as of 23 May 2013.

Section 14, insofar as it concerns sections 41, 41.2, 41.3, 42, 42.2, 42.3 and 43 of the Regulation respecting construction contracts of public bodies, applies to contracts in progress on 15 September 2013, regardless of the periods indicated therein, and to contracts entered into from that date.

Section 14, insofar as it concerns sections 41.1 and 42.1 of the Regulation respecting construction contracts of public bodies, applies to any additional expenditure resulting from an amendment to the contract made as of 15 September 2013.

18. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except section 14, which comes into force on 15 September 2013.

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Gouvernement du Québec

O.C. 432-2013, 24 April 2013

An Act respecting contracting by public bodies
(chapter C-65.1)

Supply contracts of public bodies — Amendment

Regulation to amend the Regulation respecting supply contracts of public bodies

WHEREAS, under paragraphs 1, 3 and 5 to 7 of section 23 of the Act respecting contracting by public bodies (chapter C-65.1), the Government may make regulations on the matters set forth therein with respect to supply contracts of public bodies;

WHEREAS the Government made the Regulation respecting supply contracts of public bodies (chapter C-65.1, r. 2) which includes provisions concerning public calls for tenders and the publication of information in the electronic tendering system approved by the Government;

WHEREAS it is expedient to amend the Regulation;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft of the Regulation to amend the Regulation respecting supply contracts of public bodies was published in Part 2 of the *Gazette officielle du Québec* of 18 July 2012 with a notice that it could be made by the Government on the expiry of a 45 days following that publication;

WHEREAS the 45-day period has expired;

WHEREAS, in accordance with section 23 of the Act respecting contracting by public bodies, the Conseil du trésor recommends that it be made;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister responsible for Government Administration and Chair of the Conseil du trésor:

THAT the Regulation to amend the Regulation respecting supply contracts of public bodies, attached to this Order in Council, be made.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting supply contracts of public bodies

An Act respecting contracting by public bodies (chapter C-65.1, s. 23, pars. 1, 3 and 5 to 7)

1. The Regulation respecting supply contracts of public bodies (chapter C-65.1, r. 2) is amended in section 4

(1) by inserting the following after subparagraph 2 of the second paragraph:

“(2.1) if applicable, a brief description of the options;”;

(2) by adding the following paragraph at the end.

“For the purposes of this Regulation, “option” means an option to renew or an option to acquire additional goods identical to those initially acquired, at the same price and intended to fulfil the procurement requirements referred to in subparagraph 2 of the second paragraph.”.

2. Section 5 is amended

(1) by inserting the following after subparagraph 1 of the first paragraph:

“(1.1) if applicable, the description of the options;”;

(2) by adding “or that have expressed in writing their intent to be parties to it and the identification of their procurement requirements” at the end of subparagraph 2 of the first paragraph.

3. Section 7 is amended by adding the following paragraph at the end:

“Compliance requirements must also specify that the filing by a supplier of several tenders for the same call for tenders entails automatic rejection of all the supplier’s tenders.”.

4. The following is inserted after section 7:

“**7.1.** Compliance requirements must also specify that a tender with an unusually low price is non-compliant and must be rejected, after authorization from the chief executive officer of the public body pursuant to Division IV.1 of this Chapter.”.

5. The following is inserted after section 15:

“**15.1.** The contract is awarded when the successful tenderer is chosen by the public body or, as the case may be, when the drawing of lots takes place.”.

DIVISION IV.1 TENDERS WITH AN UNUSUALLY LOW PRICE

15.2. The price of a tender is unusually low if an extensive and documented analysis by the committee referred to in section 15.4 shows that the submitted price cannot enable the supplier to carry out the contract on the conditions set in the tender documents without jeopardizing the performance of the contract.

15.3. Where a public body observes that the price of a tender is unusually low, the public body requests to the supplier that it exposes in writing, within 5 days of receiving such request, the reasons warranting such price.

15.4. If the supplier fails to submit explanations within the time set in section 15.3 or if, despite the explanations provided, the public body still considers the price to seem unusually low, the public body forwards the tender to a committee set up for that purpose for analysis.

The committee is composed of the contract rules compliance monitor of the public body and at least 3 members designated by the chief executive officer of the public body who are not involved in the awarding process.

The contract rules compliance monitor supervises the committee's work.

15.5. In analyzing the tender, the committee takes the following factors into account:

(1) the gap between the tendered price and the public body's estimate of the expenditure, which is confirmed by an adequate and rigorous audit;

(2) the gap between the tendered price and the price tendered by the other suppliers that have submitted a compliant tender;

(3) the gap between the tendered price and the price paid by the public body, or by another public body, under a similar contract, taking into account the economic context; and

(4) the representations made by the supplier concerning the existence of particular facts that have an influence on the tendered price, such as

(a) the method of manufacturing the goods covered by the call for tenders, or the components forming the goods;

(b) the exceptionally favorable circumstances that would help the supplier in the performance of the contract;

(c) the innovative character of the tender;

(d) the working conditions of the supplier's employees or, if applicable, subcontractors; and

(e) the government financial assistance received by the supplier.

15.6. The committee states in a report its conclusions and the reasons in support of the committee's conclusions.

If the conclusions are that the tendered price is not unusually low, the contract rules compliance monitor sends a copy of the report to the chief executive officer of the public body.

If the conclusions are that the tendered price is unusually low, the contract rules compliance monitor sends a copy of the report to the supplier.

15.7. The supplier may, within 10 days of receiving the report referred to in section 15.6, send written comments to the contract rules compliance monitor of the public body.

15.8. Having taken cognizance of the comments, if any, the committee decides whether it upholds the conclusions of its report or not.

If the committee does not uphold the conclusions of its report, the contract rules compliance monitor sends a copy of the updated report to the chief executive officer of the public body.

If the committee upholds the conclusions of its report, the contract rules compliance monitor sends a copy of the updated report, if applicable, to the chief executive officer of the public body, who authorizes the rejection of the tender not later than before the expiry of the period of validity of tenders.

15.9. The public body informs the Conseil du trésor of the tenders rejected pursuant to section 15.8."

6. The following is inserted after section 16:

"**16.1.** Despite section 10, a public body may evaluate the quality of a tender in order to award a delivery order contract by applying the provisions of Division II of this Chapter respecting an evaluation based on a minimum level of quality."

7. Section 29.1 is amended

(1) by striking out "and section 46" in the second paragraph;

(2) by replacing "minister responsible" in the fourth paragraph by "Conseil du trésor";

(3) by inserting "equal to or" before "above" in the fourth paragraph.

8. Section 35 is amended by replacing the second paragraph by the following:

"If such a contract or subcontract is to be entered into with a supplier or subcontractor of another province or territory of Canada in respect of which an employment equity program is applicable, and that supplier or subcontractor employs more than 100 persons, the supplier or subcontractor must provide an attestation to the effect that the supplier or subcontractor has made a commitment to implement an employment equity program complying with the program of its province or territory.

If such a contract or subcontract must be entered into with a supplier or a subcontractor of Québec or of another province or territory of Canada, that is governed by the federal legislation, that employs more than 100 persons and in respect of which a federal employment equity program is applicable, the supplier or subcontractor must provide an attestation to the effect that the supplier or subcontractor has made a commitment to implement an employment equity program complying with the federal program.”.

9. Section 36 is replaced by the following:

“**36.** The Chair of the Conseil du trésor cancels the attestation issued to a supplier referred to in the first paragraph of section 35 who does not fulfil a commitment to implement an employment equity program.

Any supplier whose attestation referred to in section 35 has been cancelled may not enter into a supply contract with a body referred to in section 34 or a supply subcontract related to such contract as long as a new attestation has not been issued.”.

10. Section 37 is amended by replacing “the ISO 9001: 2000 standard” in the first paragraph by “an ISO standard”.

11. Sections 38 to 40 are replaced by the following:

**“DIVISION I
CONTRACTS ENTERED INTO FOLLOWING
A PUBLIC CALL FOR TENDERS**

38. Following a public call for tenders, the public body publishes in the electronic tendering system, within 15 days of the conclusion of the contract, the initial description of the contract. That description contains at least

(1) the name of the supplier or, in the case of a delivery order contract involving several suppliers, the name of the suppliers selected;

(2) the nature of the goods covered by the contract;

(3) the date of conclusion of the contract;

(4) the amount of the contract or, in the case of a delivery order contract, the estimated amount of the expenditure or, in the case of a delivery order contract involving several suppliers, the price submitted by each, respectively; and

(5) in the case of a contract that involves options, the description of the options and the total amount of the expenditure that will be incurred if all options are exercised.

38.1. The public body publishes in the electronic tendering system any additional expenditure resulting from an amendment to the contract, within 60 days of the amendment, if the initial amount of the contract referred to in section 38 is increased by more than 10%.

The public body then publishes the amount of the additional expenditure, including the expenditures accumulated prior to the expenditure exceeding 10% of the initial amount of the contract and publishes thereafter each additional expenditure.

38.2. The public body also publishes in the electronic tendering system, within 90 days of the end of a contract referred to in section 38, the final description of the contract. That period is extended to 120 days for a contract entered into following a joint call for tenders referred to in section 15 of the Act.

The final description of the contract contains at least

(1) the name of the supplier, the date of the end of the contract and the total amount paid;

(2) in the case of a task order contract involving several suppliers, their respective name and the total amount paid to each supplier; and

(3) in the case of a contract involving options, the type and number of options exercised and the total amount paid following their exercise.

38.3. If a delivery order contract involving several suppliers involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 38 to 38.2, the public body indicates in the electronic tendering system how to obtain the information related to the results.

**DIVISION II
CONTRACTS ENTERED INTO BY MUTUAL
AGREEMENT OR FOLLOWING AN INVITATION
TO TENDER**

39. The public body publishes, in the electronic tendering system, within 30 days of entering into a contract involving an expenditure equal to or greater than \$25,000 and entered into by mutual agreement or following an invitation to tender, the initial description of the contract. The description contains at least

(1) the method for awarding the contract;

(2) the name of the supplier or, in the case of a delivery order contract involving several suppliers, the names of the suppliers retained;

(3) the nature of the goods covered by the contract;

(4) the date of conclusion of the contract;

(5) the amount of the contract or, in the case of a delivery order contract, the estimated amount of the expenditure or, in the case of a delivery order contract involving several suppliers, the price submitted by each, respectively;

(6) in the case of a contract that involves options, their description and the total amount of the expenditure that would be incurred if all options are exercised; and

(7) in the case of a contract entered into by mutual agreement and involving an expenditure equal to or above the public tender threshold, the provision of the Act or of this Regulation under which the contract was awarded and, in the case of a contract awarded pursuant to subparagraph 4 of the first paragraph of section 13 of the Act, a statement of the reasons invoked in support of excluding the contract from the public call for tenders.

39.1. The public body publishes in the electronic tendering system any additional expenditure resulting from an amendment to the contract, within 60 days of the amendment, if the initial amount of the contract referred to in section 39 is increased by more than 10%.

The public body then publishes the amount of the additional expenditure, including the expenditures accumulated prior to the expenditure exceeding 10% of the initial amount of the contract and publishes thereafter each additional expenditure.

39.2. The public body also publishes, in the electronic tendering system, within 90 days of the end of the contract referred to in section 39, the final description of the contract. That period is increased to 120 days for a contract entered into for the benefit of joint public bodies referred to in section 15 of the Act.

The public body also publishes, within the same time, the final description of any contract that, at the time of its conclusion, was to involve an expenditure lower than \$25,000 when it was entered into, but for which the total amount paid is equal to or greater than \$25,000.

The final description of a contract must contain at least

(1) the name of the supplier, the date of the end of the contract and the total amount paid;

(2) in the case of a delivery order contract involving several suppliers, their respective name and the total amount paid to each of them;

(3) in the case of a contract that involves options, the type and number of options exercised and the total amount paid following their exercise; and

(4) in the case of a contract referred to in the second paragraph, the other information provided for in paragraphs 1 to 6 of section 39 and section 39.1.

39.3. If a delivery order contract involving several suppliers involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 39 to 39.2, the public body indicates in the electronic tendering system how to obtain the information related to the results.

40. Despite sections 39 to 39.3, no publication is required in the case of a contract involving confidential or protected information within the meaning of subparagraph 3 of the first paragraph of section 13 of the Act.”

12. Section 46 is revoked.

FINAL

13. Sections 1 to 4, section 5, to the extent that that section concerns the provisions of section 15.2 to 15.9 of the Regulation respecting supply contracts, and the provisions of section 6 apply only to calls for tenders issued as of 23 May 2013.

Section 11, insofar as it concerns sections 38, 38.2, 38.3, 39, 39.2, 39.3 and 40 of the Regulation respecting supply contracts of public bodies, applies to contracts in progress on 15 September 2013, regardless of the periods indicated therein, and to contracts entered into from that date.

Section 11, insofar as it concerns sections 38.1 and 39.1 of the Regulation respecting supply contracts of public bodies, applies to any additional expenditure resulting from an amendment to the contract made as of 15 September 2013.

14. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except section 11, which comes into force on 15 September 2013.

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